tory oral evidence to support the conviction. For the above reasons, we do not direct a new trial but quashed the conviction and sentence and ordered that both appellants be discharged and acquitted.

Order accordingly.

Solicitors: *R. Rajasingam & Co.; Darshan Singh & Co.*

ABDUL WAHID BIN DATO HAJI ABDUL RAHIM GULAM RASOOL SHAIK & ORS. v. SHARIAHBIBI BINTI IBRAHIM MYSOORY & ORS.

[O.C.J. (Eusoff Chin J.) May 12, 1985]

[Kota Bharu – Civil Suit No. 131 of 1976]

Islamic Law – Mard-al-Maut or death-illness – Transfer of Shares in match factory at under value – Donor suffering from lung cancer – Reasonable probability of death – Transfers set aside.

In this case the plaintiffs brought an action to invalidate the transfer of shares in a match factory at an under value by Dato Haji Abdul Rahim Gulam Rasool Shaik (since deceased) to four of the defendants. At the time of the transfer the deceased was suffering from acute lung cancer. It was argued that the transfers were void under the doctrine of *mard-al-maut.*

Held: (1) on the evidence in this case the deceased having known that he had lung cancer and being aware that the cancer was a very serious illness, believed that his death was imminent, and in contemplation of his death he had taken action to transfer 298 of his 300 shares in the Kelantan Match Factory to four of his sons without the consent of the other heirs to the estate;

(2) on the evidence also there was no improvement in the health of the deceased. His health continued to deteriorate until his death. The deceased was therefore under apprehension of imminent death and nothing had happened to him that would interrupt such apprehension from his mind until he died;

(3) the transfers of the shares to the four defendants were void under the doctrine of *mard-al-maut* and judgment must be given for the plaintiffs.

Cases cited in argument:

(1) *Haji Embong b. Ibrahim & Ors.* v. *Tengku Nik Maimunah Hajjah binte Almarhum Sultan Zainal Abidin & Anor.* [1980] 1 M.L.J. 286.
(2) *Fazal Ahmad & Anor.* v. *Mt. Rahim Bibi & Ors.* A.I.R. 1919 Allahabad 148.
(3) *Sharof Ali Abdul Ali Shat* v. *Safiaboo & Ors.* A.I.R. 1936 Madras 432.
(4) *Eh Riyid* v. *Eh Tek* [1976] 1 M.L.J. 262.
(5) *Tuan Man & Anor.* v. *Che Som & Ors.* (1932) 1 M.C. 134.
(6) *Fatima Bibi & Ors.* v. *Sheikh Ahmad Baksh* L.R. 35 I.A. 67.
(7) *Anjalai Ammal* v. *Abdul Kareem* [1969] 1 M.L.J. 22.
(8) *Thorp* v. *Holdsworth* (1876) 3 Ch. D. 637.
(9) *Kiaw Aik Hang* v. *Tan Tien Choy* [1964] M.L.J. 99 C.A.
(10) *Subrahmanyan* v. *Subba Rao* A.I.R. 1948 P.C. 95.
(11) *Re Ismail bin Rentah, Deceased; Haji Hussain* v. *Liah & Ors.* [1940] M.L.J. 98.
(12) *Safia Begum* v. *Abdul Rajak* A.I.R. 1945 Bombay 438.
(13) *Amanullah bin Haji Ali Hasan* v. *Hajjah Jamilah* [1975] 1 M.L.J. 30.
(14) *Jinjara Khatun* v. *Mohammad Fakirulla Mia* (1921) I.L.R. 49 Calcutta 477.
(15) *Re Wrightson* [1908] 1 Ch. 789.
(16) *Blay* v. *Pollard & Morris* [1930] 1 K.B. 628, 634.
(17) *Ibrahim Goolam Ariff* v. *Saiboo* (1907) L.R. 34 I.A. 167.
(18) *Fazal Ahmad* v. *Rahim Bibi* (1918) I.L.R. 40 All. 238; 51 I.C. 638.
(19) *Sarabai* v. *Rabiabai* (1905) I.L.R. 30 Bombay 537.
(20) *Hassan Ali Degumiya* v. *Ruh Ullah* A.I.R. 1925 Bom. 305; 27 Bom. L.R. 184.
(21) *Khajooroonnissa* v. *Rowshan* (1876) I.L.R. 2 Cal. 184.
(22) *Bafatun* v. *Bilaiti Khanum* (1903) I.L.R. 30 Cal. 683.

CIVIL SUIT.

Varghese George for the plaintiffs.

C.H. Liew for 1st and 4th defendants in C.S. No 131/76 and defendant in C.S. No 20/79,

Dato Wrigglesworth for the 2nd and 3rd defendants

Cur. Adv. Vult.

Eusoff Chin J.: On October 1, 1980 by consent of the parties, Civil Suit No. 20 of 1979, was ordered by this High Court to be consolidated, and to proceed as one action, with Civil Suit No. 131 of 1976

The three plaintiffs in both suits are the same people being beneficiaries in the estate of the late Dato Haji Abdul Rahim Gulam Rasool Shaik (deceased). They seek to invalidate the deceased's transfer of 298 of his shares in Kelantan Match Factory Limited to the defendant in Civil Suit No. 20 of 1979, and to the 2nd, 3rd and 4th defendants in Civil Suit No. 131 of 1976 on October 11, 1966 (this date was agreed in the statement of agreed facts). The claim in both suits was based on

the same grounds and raised similar issues. The orders prayed for are –

1. A declaration that the transfers of the said shares were and are null and void and of no effect whatsoever.

2. An order that all such transfers be set aside.

3. An account to be taken and made by each of the Defendants or such of them as are found to have received such transfers of shares and properties of all shares or other properties received by each of them under the aforesaid transfers and all interest dividends and other benefits that have accrued in respect of those shares or other properties from the date of the respective transfers to the date of taking the account.

4. An order that the Defendants or such of them as are found to have received such transfers of shares and properties do re-transfer or make over to the estate all such shares and other properties and the dividends and other benefits found to have accrued in respect of the said shares or other properties or do pay the value thereof to the said estate.

Dato' Wrigglesworth counsel for the 2nd and 3rd defendants raised the issue that neither of the two co-administrators of the estate of the deceased was made a party to the proceedings as an administrator of that estate. He submitted that this is fatal to the plaintiffs' claim. I agree with the counsel for the plaintiffs that this point should properly have been raised before the trial, or a preliminary objection be taken at the trial. Further Mohamed Zahir J. (as he then was) had posed an issue which could have similar effects had the counsel for 2nd and 3rd defendants taken this objection when the parties appeared before him on September 2, 1981. The Judge had invited counsel to address him on the following point –

"whether the plaintiffs' cause of action in bringing a separate suit rather than a probate action in the Letter of Administration of the Estate of the deceased was proper."

On November 5, 1981, when the parties again appeared before the Judge, the parties agreed that there should be no further arguments on this point. All counsel agreed that the case be set down for trial. I quite appreciate the fact that the 1st plaintiff and the 1st defendant who are co-administrators of the estate of deceased are having opposing stands on the issues in these suits, and under such circumstances it would not be possible for the estate to take action against the beneficiaries who are holding the shares allegedly forming part of the deceased's estate, especially in the face of the allegation that the 1st defendant was acting as guardian for the 3rd defendant in Civil Suit No. 131 of 1976 and the defendant in Civil Suit No. 20 of 1979, both of whom were minors when the deceased transferred 100 shares and 98 shares respectively, to them. I would therefore find that both the actions had been properly brought against the defendants by the plaintiffs who sought to invalidate the transactions which led to the transfer of the 298 shares in Kelantan Match Factory Limited. Further if the plaintiffs succeed in their claim before the Court, the order would be binding upon the 1st defendant in her capacity as co-administrator of the deceased's estate.

Dato' Wrigglesworth for the 2nd and 3rd defendants in Civil Suit No. 131 of 1976 further alleged in submission that the plaintiffs had not pleaded facts necessary to establish a situation in which the doctrine of mard-al-maut would apply. I find that the plaintiffs in their amended statement of claim in Civil Suit No. 131 of 1976, paragraphs 8 and 9 have complied sufficiently with the requirement of Order 18 Rule 7(1) of the Rules of the High Court 1980.

The statement of agreed facts (marked AF) states that the deceased, all the parties in both Civil Suit 131/1978 and 20/1979 and the other beneficiaries to the estate of deceased profess and practice the Islamic religion and belong to the Hanafi School of the Sunni Sect. I do not therefore find any valid reason why the counsel for the 2nd and 3rd defendants in Civil Suit No. 131 of 1976 ought to raise this question in his submission that the plaintiffs had not pleaded whether the parties were Muslims and if so to what Sect or School they belonged. In any event there is evidence on record that the deceased was a Muslim and belonged to the Hanafi Sect.

The facts are that the deceased discovered he had cancer of the lungs when he was in hospital in Singapore between September 29, 1966 to October 8, 1966. He held 300 shares in Kelantan Match Factory Limited (see statement of agreed facts – AF). On October 9, 1966 and on October 11, 1966 (see Exh. D14, D15A, D13A & D13B) he had transferred to four of his sons the following Kelantan Match Factory Limited shares –

Khalid (2nd defendant in C.S. 131/76 — 50 shares
Mustaq Ahmad (3rd defendant in C.S. 131/76 — 50 shares
Gulam Rasool (4th defendant in C.S. 131/76) — 100 shares
Mohamed Iqbal (defendant in C.S. 20/79) — 98 shares

Deceased died of cancer of the lungs on May 3, 1967. Five years earlier he had tuberculosis of the lungs. PW2, Dato' Dr. Ahmad Ezanee Merican the deceased's personal physician had been treating the deceased for a long time. In September 1966, the deceased went to see PW2 because deceased had blood-stained sputum. PW2 referred deceased to PW1 a physician attached to the General Hospital in Singapore. PW1 saw the deceased on September 29, 1966 and admitted the deceased to the General Hospital Singapore until October 8, 1966. X-ray of the deceased's chest, and bronchoscopy showed that deceased had lung cancer. The pathologist confirmed this. Radiotherapy was the recommended treatment. PW1 said cancer at that time was a terminal illness. Even today cancer is most difficult to cure. The type of cancer suffered by the deceased was mostly incurable. PW1 said that since he had to treat the deceased with radiotherapy he had to tell the deceased that the deceased had cancer. PW1 said that he had to refer the deceased to Dr. H.C. Ho of Hong Kong who was a specialist and radiotherapist for the type of cancer the deceased had. PW1 said that with the type of cancer that deceased was suffering from, he (PW1) estimated that the deceased had a life expectation of about one year. PW1, however admitted that he was not an oncologist, but was giving his views from his observation and past experience. From the discussion PW2 (Dr. Merican) had with the deceased, PW2 said that deceased knew he (deceased) had cancer. Deceased appeared calm, and was keen to put his affairs in order, and also to go for treatment as soon as possible. When he returned from Singapore the deceased went to see PW2. At that time it was quite popular to have cancer treatment in China. Alternatively, the deceased wanted to go to Hong Kong or United Kingdom. Since Dr. Ho of Hong Kong was on leave PW2 recommended the deceased to go to the United Kingdom to see a consultant Sir Brian Windeyer at Middlesex.

In October 1966 deceased went to the United Kingdom for treatment and came back in December of that year. According to PW2 after the deceased came back he looked thinner. Though the deceased said he felt better, he was, according to PW2, clinically the same. Deceased could walk about but was bed-ridden four to five weeks before his death. According to the defence witnesses the deceased continued to control the running of the match factory even though from his house until he lapsed into a coma before his death. Deceased died of pneumonia which according to PW2, was the natural complications of the cancer deceased had.

Since the deceased was, and his wife and children are of Muslim religion and of the Hanafi School of the Sunni Sect, Muslim law would apply to them. The doctrine of mard-al-maut (or death-sickness) is concerned with the legal effect of transactions entered into by persons in their death sickness. According to *N.J. Coulson* on Succession in the Muslim Family (Page 259-279) —

> "although a dying person may in terms of sanity and prudent judgment be perfectly competent to engage in transactions, he is placed under interdiction in order to protect the interest of his creditors and his heirs to the extent, basically, that any transaction which offends their interest will be effective only if they rectify it..... Unless and until the law is satisfied that a person is in fact dying, he is not subject to any form of restraint in his dealings with his property, however clear it may be that he was acting in contemplation of his death ..... On the other hand, once the law is satisfied that a person is dying, then he is subject to interdiction, however proper the motives behind his transactions might be, and however convinced he may personally have been that he was not dying ..... It is the physical fact of impending death and not the mental contemplation of it that is the basis of the interdiction ..... Basically, in traditional Sharia' Law, a person's state of mind is irrelevant to the initial question of whether or not he is to be placed under interdiction on account of death-sickness, but his state of mind becomes decidedly relevant once it has been determined he was in fact a dying person. For then the legal effect of the various transactions that he has undertaken during his death-sickness is governed by the basic presumption that he has acted in contemplation of his death. In short, therefore, death-sickness means both the praepositus was in fact a dying person and that there is reason to presume that he acted in contemplation of his death ..... Clearly the existence or otherwise of a reasonable apprehension of death is a question of fact for each individual case..... To qualify as a death-sickness an ailment need not necessarily be one which is invariably fatal; it is sufficient that there is reasonable probability of death."

There is in this case the evidence that the deceased died of cancer. Deceased was found to have the cancer when he went to see PW1 and was admitted to the general hospital in Singapore between September 29, 1966 to October 8, 1966. I am also satisfied that the deceased was informed by PW1 and PW2 that he (deceased) had cancer.

The cancer that deceased was suffering from was very malignant, i.e. it would spread very quickly to the other parts of the lung. It was at the root of the right lung and was very difficult to remove by operation. Cancer was a serious disease and mostly incurable. According to PW1 cancer at that time was a terminal illness. PW1 was of the view that the deceased would not live beyond one year. It is not disputed by both parties that the deceased had cancer, a disease which in all probabilities would cause death.

The Anglo-Muhammadan law requires that the deceased was under an apprehension of imminent death when he made the transfers of his shares. It is necessary to examine the evidence to determine the personal state of mind of the deceased at the material time. PW2, the deceased's personal physician said that the deceased knew that he had cancer, and that the deceased wanted to put his affairs in order. This was after the deceased returned from Singapore and before leaving to the United Kingdom. The evidence shows that the deceased was intelligent, strong-willed, intensely practical and very religious man. He was an unusual sort of person. Upon his return from Singapore he wanted to proceed with the radiotherapy treatment and, according to PW2, he wanted to get everything over as quickly as possible. Although he knew he had cancer, the deceased preferred to put it into a blind spot and liked to believe that he had only tuberculosis which was curable. PW2 was of the view that the deceased was then 'trying to clutch at straws'. PW1 expressed the view that he found it difficult to believe that if a patient knew he (the patient) had cancer, he would subsequently have an optimistic attitude or go round believing himself to have been cured, unless his doctor had told him that he had been cured of the disease. PW1 himself had not known of any cancer patient who, having known that he (the patient) was suffering from cancer, would be having an optimistic attitude. The fact is that the deceased was in Singapore General Hospital from September 29, 1966 to October 10, 1966. There he learned that he was suffering from lung cancer. Upon his return to Kota Bharu he transferred 298 of his 300 shares in Kelantan Match Factory Limited to the four defendants, i.e. 50 shares each to Mustaq Ahmad and Khalid on October 9, 1966 (see Exh. D14 and D15A), 100 shares to Gulam Rasul and 98 shares to Mohamed Iqbal on October 11, 1966 (see Exh. D13A and D13B). Exhibits D13A, D13B, D14 and D15A are forms for the transfer of shares by the deceased to four of his children.

On October 10, 1966 at 10.00 a.m. the deceased chaired a meeting of the Board of Directors of Kelantan Match Factory Limited. The directors were the deceased himself and his wife DW1. The meeting approved the transfers of the shares by the deceased to the four defendants as stated above. It also approved the appointment of deceased's wife DW1 as the Managing Director and Chairman of the Kelantan Match Factory Limited effective from the date of the meeting. (see Exh. D17). Zulekhabibi (DW5) was the secretary at that board meeting. Under cross examination DW5 said that the deceased was the person who prepared the document Exh. D17, and that she signed it as the secretary. The meeting also resolved that new share-certificates were to be issued to the transferees.

The deceased's wife (DW1) said that the deceased was a patient, calm and strong minded person. She could not influence him to do anything he did not want to do. It was the deceased who wanted to sell the 298 shares to his children. No proper valuation of the shares was made but the deceased valued the cost of each share at $1000. Khalid and Mustaq (2nd and 3rd defendants) had their dividends in Kelantan Match Factory Limited. DW1 (deceased's wife) withdrew $50,000 from the dividends due to Khalid and $50,000 from the dividends due to Mustaq to be paid to deceased as the price of their shares sold to them. The two cheques were dated October 8, 1966, i.e. the date the deceased was discharged from Singapore hospital. DW1 herself paid with her own money, $198,000 for the shares transferred to the other two children, Iqbal and Gulam. Her cheque for $198,000 was dated October 8, 1966. She had to use a Kota Bharu cheque to withdraw money at her Kuala Lumpur bank. To meet the cheque she had to get an overdraft. DW1 admitted there was urgency to take the money out, but she could not explain why there was such an urgency to resort to this overdraft. The evidence, including the bank statements at AB 38 and AB 45, the Estate Duty Questionnaire at AB 21, AB 24, and AB 29 and the Estate Duty Assessment at AB 63 and AB 74, shows that the deceased had received the $298,000 for the sale of the 298 shares at $1000 per share.

The deceased arranged for Dato' Wrigglesworth to effect the transfers of the shares. Subsequently Dato' Wrigglesworth sent to DW1 letters confirming that the transfers had been effected. (Exh. D13; D14, D15 dated October 16, 1966).

Both Khalid and Mustaq (defendants No. 2 and No. 3 in Civil Suit No. 131 of 1976) agreed that the shares they purchased from their father (deceased) was worth $3,433 each. If that is so, then the market price of each share would not be $1000 as valued by deceased when he sold the shares to the four defendants. It is easy to see why the deceased had undervalued the price of each share. I believe he did so not only because he wanted the four defendants to have his shares but to enable the transferees to pay for them. Zulekhabibi (DW5) produced the audited account (Exh. D16) of Kelantan Match Factory Limited which shows that in 1966 the dividend due to Khalid was $104,565 and to Mustaq was $91,534. $50,000 had been taken out from each of these dividends. Had the deceased sold the 50 shares each to Khalid and Mustaq at the market value there would have been insufficient funds for Khalid and Mustaq to meet the purchase price of the shares.

In a situation like this the state of mind of the deceased could only be inferred from his conduct. To recapitulate, he went to Singapore for treatment of what he thought was tuberculosis. But while being hospitalised there from September 29, 1966 until his discharge on October 8, 1966, he learned that he had cancer of the lungs. He came back to Kota Bharu. On October 9, 1966, he executed the forms for transfer of 100 of his shares to Khalid and Mustaq Ahmad, and on October 11, 1966 another 198 of his shares to Gulam Rasul and Mohamed Iqbal. It is also clear that on October 8, 1966 itself i.e. upon his return to Kota Bharu, he had caused his wife (DW1) who was the other director of Kelantan Match Factory Limited to withdraw $50,000 each from the dividends of Khalid and Mustaq, and also to pay $198,000 for the price of shares to be sold to Iqbal and Gulam. These three cheques signed by DW1 are dated October 8, 1966 (see AB page 3). On October 10, 1966 the deceased had chaired a meeting of the board of directors to approve the transfers of the shares, and to appoint his wife to be Chairman and Managing Director of Kelantan Match Factory Limited. He also engaged Dato' Wrigglesworth to effect the transfers of the shares quickly. All these were done in great hurry. He had also valued the shares at far below the market price. On the evidence I can only conclude that the deceased having known that he had cancer, and being aware that cancer was a very serious illness, believed that his death was imminent, and in contemplation of his death he had taken immediate action to transfer 298 of his 300 shares in Kelantan Match Factory to four of his sons without the consent of the other heirs to his estate.

It is also necessary for the Court to make a finding whether or not the health of the deceased had improved since effecting the transfers of his shares to the four defendents. If there was such improvement, however slight, which had caused the deceased to be no longer expecting imminent death from cancer, then the doctrine of mard-al-maut will not apply. The fact is that having made the transfers of shares to the four defendants, the deceased concentrated his attention to pursue further treatment of his cancer. He was supposed to see Dr. Ho in Hong Kong. But Dr. Ho was on leave. Dr. Merican (PW2) recommended the deceased to get treatment from Sir Brian Windeyer in Middlesex, United Kingdom (U.K.). The deceased left in October 1966, for the U.K. and returned to Kota Bharu in December of that year. He told PW2 that he felt better. But PW2 found that clinically the deceased was the same as he was before he left for U.K. PW2 observed that the deceased looked thinner.

None of the members of the deceased's family knew that deceased was suffering from cancer. He never told it to anyone, not even his wife. Perhaps he did not want to upset them. He told them he was going for treatment of his illness, but did not mention 'cancer'. His wife only learned that he had cancer just before he returned from U.K. in December 1966. That too she learned not from the deceased but from one Mr. Naga. His children described him as a strict disciplinarian, fierce with them but reasonable. His wife (DW1) said that upon the deceased's return from the U.K. the deceased was getting better. I doubt this is so because PW2 was of the view that even after three months' medical treatment in the U.K. the deceased was the same clinically. His children too observed that deceased's health had not improved. Dato' Khalid (DW3) said that after the deceased came back from the U.K. he stopped going to the factory, and his health slowly declined. Zulekhabibi agreed that from October 1966 her father's health progressively deteriorated and he finally succumbed to his illness. She also said that before September 1966 her father went to the factory to do his work. The evidence shows that after December 1966 the deceased remained in his house but continued to give instructions and make decisions for his workers.

On the evidence, my finding is that there was no improvement in the health of the deceased. In

fact his health continued to deteriorate till his death. I therefore find that when the deceased knew he had cancer, he was under apprehension of imminent death and that nothing had happened to him that would interrupt such apprehension from his mind until he died.

I also find that the deceased had transferred 298 of his 300 shares in Kelantan Match Factory Limited to the defendants to prevent the three plaintiffs who are his heirs, from making any claim to those shares upon his death. It is also a fact that the plaintiffs had never given their consent to the deceased to transfer those shares to the four defendants.

I would, therefore, find that the transfers of the 298 shares in the Kelantan Match Factory by the deceased to the four defendants are void under the doctrine of mard-al-maut. I give judgment for the plaintiffs in these two civil suits, and order that:

a) the transfers of the 298 shares in Kelantan Match Factory by the deceased to the defendants No. 2, No. 3 and No. 4 in Civil Suit No. 131 of 1976, and the defendant in Civil Suit No. 20 of 1979 made by him on October 9, 1966 and October 11, 1966 be set aside;

b) the estate of the deceased do return the purchase money for the said shares to the four defendants mentioned in (a) above;

c) the four defendants mentioned in (a) do re-transfer the shares they had purchased from the deceased to the estate;

d) the four defendants mentioned in (a) do take and make full accounts in respect of the shares, dividends paid and other benefits received by them and that they forthwith pay the same to the estate of the deceased.

As had been agreed by the parties, the question of costs shall be submitted by them upon delivery of the decision in these two suits. I reserve the question of costs until I have heard the counsels' submissions on this.

Order accordingly.

Solicitors: *Zain & Co.; C. H. Liew & Co.; Wrigglesworth & Co.*

K. SHANTA KUMARI v. VIJAYAN

[O.C.J. (Wan Yahya J.) November 19, 1985]

[Malacca – Originating Summons No. 145 of 1985]

Family Law – Custody of infant – Welfare of infant – Conduct of the parties – Guardianship of Infants Act 1961, s. 11.

In this case the applicant applied to regain the custody of her 20 month old infant from her father. Except for a brief period when she was taken away by the father the infant had been in the loving care of her mother, the applicant. The father had neglected the child since her birth but had taken the child away when he visited her without the mother's knowledge or consent.

Held: (1) in deciding the question of custody under Section 11 of the Guardianship of Infants Act 1961, it is imperative for the court to note that no parent enjoys an earlier or superior right over the child and that the welfare of the infant should be the paramount consideration. The care, comfort and attention as well as the wellbeing and happiness of the child are relevant matters to be considered. The Court may also look to the conduct of the parties and decide which of the two houses can offer the child the better security and stability;

(2) even going on the assumption that both parents are equally capable of providing the care, comfort and attention to the infant, the courts have always leaned in favour of the mother being given custody of young infants;

(3) in this case it is in the interest and welfare of the infant that she should continue to remain in the custody of the mother.

Cases referred to:

(1) *Kades* v. *Kades* (1961) 35 A.L.J.R. 251.
(2) *Re Orr* [1973] 2 D.L.R. 77.
(3) *Myriam* v. *Mohamed Ariff* [1971] 1 M.L.J. 265.
(4) *Koh Teng Lam* v. *Elsie Koh Chen Chee & Anor.* [1976] 1 M.L.J. 103, 177.
(5) *Loh Kon Fah* v. *Lee Moy Lan* [1976] 2 M.L.J. 199.

ORIGINATING SUMMONS.

D.A. Devadason for the applicant.
Foo Nyong Tiam for the respondent.

Cur. Adv. Vult.

Wan Yahya J.: This is an application by a mother to regain custody of her 20-month old infant from her father. Shanta Kumari, the applicant herein, was married to the respondent, Vijayan, on September 1, 1982. She was 23 years old and was an employee of the Kua Denko, Melaka. He was a year younger and unemployed. The union came about through an arranged marriage.